



Local 1277

News

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1744 North Main Street • Los Angeles, CA 90031 • (323) 222-1277

Website: www.atu1277.com



Even Seven Weeks Later, This Moment is Special!



"On behalf of the more than 200,000 members of the ATU, we congratulate President Biden and Vice President Harris on this historic day. We look forward to working together over the next four years to move our nation forward for all Americans."

— ATU International President John Costa

President's report

Notes from the Front Line: What a Difference a New President Makes!

By Art Aguilar - President, Local 1277

In just his *second day* in office, President Biden issued an Executive Order requiring federal agencies to mandate the wearing of anti-virus masks on public transit, intercity buses, trains, airports, commercial airplanes, and public maritime vessels.

ATU International President John Costa praised the move, saying, "This Executive Order by President Bidens shows his serious commitment to protecting frontline workers and the riding public. The ATU looks forward to working with the Department of Transportation on the mask mandate, and with the Biden Administration to make the safety of frontline workers a priority."

President Costa further noted, "Since the outbreak hit, ATU has been in the forefront of demanding that agencies, private contractors and elected officials move quickly to deliver needed protections, as well as policy changes for keeping transit workers and riders safe and our transit systems running."



President Biden *removed* the Trump-appointed General Counsel of the National Labor Relations Board (NLRB), Peter Robb. Further, he *named* pro-worker administrator Lauren McFerran as the new Chair of the NLRB.

ATU President Costa supported both moves. "Under Robb's legal guidance, the NLRB led an assault on the very rights he was entrusted to protect—the rights of working people to join a union and engage in collective bargaining. I applaud Robb's dismissal and the appointment of Ms. McFerran. These two moves show how serious the Biden Administration is on insisting on the faithful enforcement of national labor laws and building a pro-worker agenda in America."

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President Biden named Nuria Fernandez as Acting Director of the Federal Transit Administration. ATU President Costa calls her “A friend of the ATU, a dedicated public servant and leader in public transportation. She understands first-hand the challenges facing transit workers and the transit industry. She knows what it will take to safely revive and expand public transit and create good, safe union jobs.”

Ms. Fernandez has worked closely with our sister ATU local in San Jose to create an innovative apprenticeship program to provide frontline transit workers with the means to advance their careers.

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DOT Secretary Pete Buttigieg met with the Presidents and members of ATU Locals 689 (Washington, D.C.) and 1300 (Baltimore) to exchange views and discuss issues that impact transit workers, including enforcing the federal mask mandate and the need for more Covid-relief funding for public transit. The ATU looks forward to working closely with Secretary Buttigieg and the DOT to tackle the nation’s transportation challenges, which include building back and expanding public transportation systems, protecting transit workers, and ensuring that they are prepared for new technologies like battery-powered buses and self-driving vehicles.

Secretary Buttigieg reaffirmed his strong support for both President Biden’s proposed \$1.9 *trillion* Covid-relief package and the much-needed emergency funding for mass transit workers and agencies.

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In a joint letter to Congress, the ATU, other transit unions, and transit agencies urged the inclusion of \$39.3 billion in emergency funding to help public transit agencies with the crushing financial burdens caused by the pandemic. The letter noted that worst thing that we can do now for American workers and the economic recovery would be to needlessly hamstring that recovery by allowing public transit services to be cut and workers furloughed or laid off. Labor and management stand together to urge Congress to provide the needed emergency funding this national crisis demands.

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Organized Labor pushes very hard for passage of the PRO-ACT. Last year, the House of Representatives passed the PRO-ACT (Protecting the Right to Organize). It was the most significant pro-working people legislation in *years*. Naturally, the *Republican-controlled* Senate killed this important bill.

The PRO-ACT is huge for organized labor. It protects organizing and collective-bargaining rights, holds corporations liable for union-busting activities, and repeals the awful “Right to Work” laws.

Now, fortunately, we have a *Democratic-controlled* Senate to go along with the *Democratic-controlled* House of Representatives. So, organized labor is making passage of the PRO-ACT job #1. Democratic members of, and candidates for, the House and Senate promised to support this crucial bill, and now we are demanding that they keep their word! Pass the PRO-ACT! We call on all pro-working people, pro-working families, and pro-union members of both houses to quickly pass the PRO-Act and send it to union-friendly President Biden for his signature!

Know your rights under Labor Code Sections 230.8 and 233; Paid Family Sick Leave and School Partnership Act

By Jeff Shaffer - Treasurer, Local 1277

Lately, I have received many inquiries regarding the use of paid sick leave to care for family members. This is a very important issue, so I want to inform you about your rights in this area under Sections 230.8 and 233 of the California Labor Code (L.C. 230.8 and 233)

There are several laws that cover your ability to have and use paid time off for family issues. L.C. 233 allows an employee to use—in any calendar year—his or hers accrued and available sick leave entitlement, *in an amount not less than the sick leave that would be accrued during six months at the employee’s then current rate of entitlement.*

L.C. 230.8, known as the Family School Partnership Act, allows an employee, who is a parent, to take time off to attend school-related activities, such as graduations, enrollment, and special school activities and emergencies.

Our members at most of the properties earn their sick leave on their anniversary date of hire. The use of this sick leave (L.C. 233) is calculated on a calendar year. So, from January 1 through December 31, you are allowed half of your sick leave allowance to be used as provided by L.C. 233. You can take this leave at your request.

Details of Section 233 – Family Leave

(a) Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee’s accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee’s then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5. This section does not extend the maximum period of leave to which an employee is entitled under Section 12945.2 of the Government Code or under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.), regardless of whether the employee receives sick leave compensation during that leave.

(b) As used in this section:

(1) “Employer” means any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.

(2) “Family member” has the same meaning as defined in Labor Code Section 245.5.

(3) (A) “Sick leave” means accrued increments of compensated leave provided by an employer to an employee as a benefit of the employment for use by the employee during an absence from the employment for any of the reasons specified in subdivision (a) of Labor Code Section 246.5.

(B) “Sick leave” does not include any benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406, as amended) and does not include any insurance benefit, workers’ compensation benefit, unemployment compensation disability benefit, or benefit not payable from the employer’s general assets.

(c) An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.

(d) Any employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.

(e) Upon the filing of a complaint by an employee, the Labor Commissioner shall enforce this section in accordance with Chapter 4 (commencing with Section 79) of Division 1, including, but not limited to, Sections 92, 96.7, 98, and 98.1 to 98.8, inclusive. Alternatively, an employee may bring a civil action for the remedies provided by this section in a court of competent jurisdiction. If the employee prevails, the court may award reasonable attorney’s fees.

(f) The rights and remedies specified in this section are cumulative and nonexclusive and are in addition to any other rights or remedies afforded by contract or under other law.

(Amended by Stats. 2015, Chapter 802, Section 2, effective January 1, 2016).

Details of Section 230.8 – School Partnership

(a) (1) An employer who employs 25 or more employees working at the same location shall not discharge or in any way discriminate against an employee who is a parent of one or more children of the age to attend kindergarten or grades 1 to 12, inclusive, or a licensed child care provider, for taking off up to 40 hours each year, for the purpose of either of the following child-related activities:

(A) To find, enroll, or reenroll his or her child in a school or with a licensed child care provider, or to participate in activities of the school or licensed child care provider of his or her child, if the employee, prior to taking the time off, gives reasonable notice to the employer of the planned absence of the employee. Time off pursuant to this subparagraph shall not exceed eight hours in any calendar month of the year.

(B) To address a child care provider or school emergency, if the employee gives notice to the employer.

(2) If more than one parent of a child is employed by the same employer at the same worksite, the entitlement under paragraph (1) of a planned absence as to that child applies, at any one time, only to the parent who first gives notice to the employer, such that another parent may take a planned absence simultaneously as to that same child under the conditions described in paragraph (1) only if he or she obtains the employer’s approval for the requested time off.

(b) (1) The employee shall utilize existing vacation, personal leave, or compensatory time off for purposes of the planned absence authorized by this section, unless otherwise provided by a collective bargaining agreement entered into before January 1, 1995, and in effect on that date. An employee also may utilize time off without pay for this purpose, to the extent made available by his or her employer. The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition that is agreed to on or after January 1, 1995.

(2) Notwithstanding paragraph (1), in the event that all permanent, full-time employees of an employer are accorded vacation during the same period of time in the calendar year, an employee of that employer may not utilize that accrued vacation benefit at any other time for purposes of the planned absence authorized by this section.

(c) The employee, if requested by the employer, shall provide documentation from the school or licensed child care provider as proof that he or she engaged in child-related activities permitted in subdivision (a) on a specific date and at a particular time. For purposes of this subdivision, “documentation” means whatever written verification of parental participation the school or licensed child care provider deems appropriate and reasonable.

(d) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in terms and conditions of employment by his or her employer because the employee has taken time off to engage in child-related activities permitted in subdivision (a) shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law shall be subject to a civil penalty in an amount equal to three times the amount of the employee’s lost wages and work benefits.

(e) For purposes of this section, the following terms have the following meanings:

(1) “Parent” means a parent, guardian, stepparent, foster parent, or grandparent of, or a person who stands in loco parentis to, a child.

(2) “Child care provider or school emergency” means that an employee’s child cannot remain in a school or with a child care provider due to one of the following:

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(A) The school or child care provider has requested that the child be picked up, or has an attendance policy, excluding planned holidays, that prohibits the child from attending or requires the child to be picked up from the school or child care provider.

(B) Behavioral or discipline problems.

(C) Closure or unexpected unavailability of the school or child care provider, excluding planned holidays.

(D) A natural disaster, including, but not limited to, fire, earthquake, or flood.

(Amended by Stats. 2015, Chapter 802, Section 1, effective January 1, 2016).

These are vitally important benefits for you and your families. Be sure you fully understand them! If you have any questions, ask your Shop Steward or a Union officer.

U.S. CDC Mandates Masks on Public Transit, School Buses and Motor Coaches

On January 29, 2021, the U.S. Centers for Disease Control and Prevention (CDC) issued an emergency action requiring transit workers and passenger to wear masks on all buses, trains, paratransit vans and motor coaches, and at all transportation hubs. The Transportation Security Administration (TSA) issued on January 31, 2021, a security directive in support of the CDC's emergency action. The emergency action and security directive will take effect on February 2, 2021.

ATU local unions should immediately demand to meet with our employers to discuss the implementation of the mask mandate and related procedures. Our employers must develop protocols that ensure maximum compliance with the mandate without placing unrealistic expectations on workers. The mandate ultimately will be enforced by the TSA as well as federal, state and local agencies. But as frontline workers, our members will be the first people responsible for implementing and enforcing the mask mandate, as we have been doing for months at many of our transit systems and school districts.

A. Is my property covered by the CDC's mask mandate?

The mandate applies to virtually all of our properties in the United States:

- (1) Public transit agencies and their private contractors. This includes systems operating fixed-route, rail, paratransit, sedan service and other modes.
- (2) School districts and their private contractors.
- (3) Motor coach companies. This includes commuter, line and charter work.
- (4) Shuttle services. This includes services on federal properties and airports or doing work under county health and human services contracts.

B. When must a mask be worn?

Transit workers and passengers must wear a mask when boarding a vehicle, for the duration of travel, and when exiting a vehicle. Transit workers and passengers must wear a mask also when entering or on the premises of a transportation hub such as a bus terminal or a subway or rail station. The narrow exceptions to the rule noted below in question "C".

C. Are there exceptions to when a mask must be worn?

For transit workers and passengers, there are a limited number of exceptions which allow someone normally required to wear a mask to take his or her mask off temporarily:

- (1) While eating, drinking or taking medication for a brief period.

- (2) While communicating with a person who is hearing impaired and the ability to see the mouth is essential for communication.

- (3) When unconscious (for reasons other than sleep), incapacitated, unable to be awakened, or otherwise unable to remove mask without assistance.

D. Does everyone have to wear a mask?

The emergency action contains only limited exceptions to who must wear a mask. The following do not need to wear masks:

- (1) Transit workers and passengers with a disability which prevents them from wearing a mask.
- (2) A person from whom wearing a mask would constitute a workplace hazard.
- (3) Children under 2 years of age.

E. What steps must our employers take to enforce the mandate?

Our employers "must use best efforts" to ensure compliance with the emergency action. The CDC states that the best efforts include:

- (1) Boarding only those who wear masks.
- (2) Instructing passengers and workers that federal law requires wearing a mask and that failure to do so constitutes a federal crime.
- (3) Monitoring passengers and seeking compliance from the passengers.
- (4) Disembarking non-compliant passengers at the earliest opportunity.
- (5) Providing notice of the mandate through multiple platforms and in multiple languages with illustrations.

F. What do we do if someone refuses to wear a mask?

Neither the emergency action nor the security directive specify the procedures to be used. For that reason it is of vital importance that you meet with your employers to discuss how noncompliance and unruly passengers will be handled, and the expectations for operators and station agents. Moreover, the security directive requires our employers to "establish procedures to manage situations with the persons who refuse to" wear a mask. Those procedures must ensure that if someone "refuses to comply with an instruction given by" the operator or station agent, the operator or station agent must:

- (1) Deny boarding the individual.
- (2) Make best efforts to disembark the individual from the vehicle as soon as practicable.
- (3) Make best efforts to remove the individual from the transportation hub as soon as practicable.

The employer must also report a refusal to comply with the mask requirement to the TSA if the failure to comply constitutes a significant security concern.